> The certification and the request that the vessel be declared immune must be accepted by the courts as a conclusive determination by the political arm of the Government that the continued retention of the vessel interferes with the proper conduct of our foreign relations. Upon the submission of this certification to the district court, it became the court's duty, in conformity to established principles, to release the vessel and to proceed no further in the cause. We have no occasion to decide whether the court should surrender the vessel and dismiss the suit on certification of sovereign immunity by the Secretary, made after the friendly sovereign has once unqualifiedly assented to a judicial determination of the controversy."
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> 318 U.S. 578, 587–590 (1943).

Request by ambassador

The Supreme Court of the United States in 1945 denied a claim of sovereign immunity by the Mexican Government with respect to a vessel owned by the Mexican Government and engaged in trade. [redacted]STAT the libel *in rem* against the vessel *Baja California* had been filed in the District Court for Southern California, the Mexican Ambassador to the United States filed a suggestion in the Court that the vessel was owned by the Mexican Government and in its possession and engaged in the transportation of cargoes. The United States Attorney for the district, in behalf of the United States Attorney General, filed in the Court a communication from the Secretary of State to the Attorney General in which the Department of State called attention to the claim of the Mexican Government already made to the Court, but took no position with respect to the claim of immunity in the case asserted by the Mexican Government. The District Court denied the claim of immunity. The Mexican Government then filed an answer to the libel on the merits and again claimed sovereign immunity. The United States Attorney for the district filed a second suggestion which stated, *inter alia*, that the Department of State accepted as true the claim that the vessel in question was the property of the Mexican Government. The District Court gave judgment for the libelants on the merits, which was affirmed by the Circuit Court of Appeals for the Ninth District (143 F.2d 854). The U.S. Supreme Court granted certiorari. Concerning the claim of immunity, the Supreme Court stated:

> "In the absence of recognition of the claimed immunity by the political branch of the government, the courts may decide for themselves whether all the requisites of immunity exist. That is to say, it is for them to decide whether the vessel when seized was that of a foreign government and was of a character and operated under conditions entitling it to the immunity in conformity to the principles accepted by the department of the government charged with the conduct of our foreign relations. See *Ex parte Peru*, . . . [318 U.S.], 588.
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> . . . . . .

"It is therefore not for the courts to deny an immunity which our government has seen fit to allow, or to allow an immunity on new grounds which the government has not seen fit to recognize. [This salutary principle was not followed in *Berizzi Bros. Co.* v. *The Pesaro*, 271 U.S. 562, where the court allowed the immunity, for the first time, to a merchant vessel owned by a foreign government and in its possession and service, although the State Department had declined to recognize the immunity. The propriety of thus extending the immunity where the political branch of the government had refused to act was not considered.

"[Since the vessel here, although owned by the Mexican Government, *was not in its possession and service* (italics added), we have no occasion to consider the questions presented in the *Berizzi* case. It is enough that we find no persuasive ground for allowing the immunity in this case, an important reason being that the State Department has declined to recognize it.] . . .

. . . . . .

"When such a seizure occurs the friendly foreign government may adopt the procedure of asking the State Department to allow it. But the foreign government may also present its claim of immunity by appearance in the suit and by way of defense to the libel. In such a case the court will inquire whether the ground of immunity is one which it is the established policy of the department to recognize. *Ex parte Muir*. . . . [254 U.S.] 533; *Compania Espanola* v. *The Navemar*, . . . [303 U.S.] 74. Such a policy, long and consistently recognized and often certified by the State Department and for that reason acted upon by the courts even when not so certified, is that of allowing the immunity from suit of a vessel in the possession and service of a foreign government."

Republic of Mexico v. *Hoffman*, 324 U.S. 30, 34–36 (1945).

In an admiralty suit brought against the Republic of Korea, plaintiff sought to recover damages sustained by its vessel, by attaching funds of the Republic of Korea on deposit in various New York banks. The vessel had been damaged by defendant's lighter while unloading rice acquired by the defendant for free distribution to civilian and military forces. The Republic of Korea made a special appearance seeking to vacate the attachment and to have the libel dismissed on the ground of sovereign immunity. The Korean Ambassador to the United States made formal representations to the Department of State requesting the Department's assistance through a suggestion of immunity from suit to the Court. The United States Attorney for the Southern District of New York, acting under the direction of the Attorney General of the United States, filed a statement with the Court as requested by the Department of State, in which he stated:

"The letter from the Secretary of State of the United States to the Attorney General of the United States recognizes that un

der international law property of a foreign government is immune from attachment and seizure, and that the principle is not affected by a letter dated May 19, 1952, from the Acting Legal Adviser to the Department of State to the Acting Attorney General of the United States, in which the Department of State indicated its intention to be governed by the restrictive theory of sovereign immunity in disposing of requests from foreign governments that immunity from suit be suggested in individual cases. The Department of State accordingly has requested that a copy of the note of the Ambassador of Korea be presented to the Court and that the Court be informed of the Department of State's agreement with the contention of the Ambassador that property of the Republic of Korea is not subject to attachment in the United States.

"The Department of State, however, has not requested that an appropriate suggestion of immunity be filed, inasmuch as the particular acts out of which the cause of action arose are not shown to be of purely governmental character."

In granting the motion of the Republic of Korea to vacate the attachment, the District Judge stated:

"Thus the State Department has taken a direct and unequivocal position with respect to the Republic of Korea's claim that its funds are immune from attachment, but has declined to make the requested suggestion of immunity from suit, asserting that upon the facts as presented it does not appear the claim rests upon acts of a purely governmental character.

. . . . . .

"It must be recognized that primarily the claim by a foreign sovereign of immunity from suit or process presents a political rather than a judicial question. This is necessarily so, for dealings between our own and a friendly foreign government are carried on through diplomatic channels by those officials to whom the matters are committed. Lest an untoward incident disturb amicable relations between the two sovereigns, it has long been established that the Court's proper function is to enforce the political decisions of our Department of State on such matters. This course entails no abrogation of judicial power; it is a self-imposed restraint to avoid embarrassment of the executive in the conduct of foreign affairs.

". . . Thus by its own interpretation of its liberal policy against unrestricted immunity, the Department of State declares in unmistakable language that it adheres to the doctrine that the property of a foreign government is immune from attachment. Indeed the principle is so well established that but for the letter of May 19, 1952 its applicability here could hardly be open to doubt. To borrow a phrase, 'Deposits may be the life-blood necessary for national existence.' Any vestige of doubt is dispelled by the State Department's suggestion filed with the Court 'as a matter of comity between the Government of the United States and the Government of the Republic of Korea.' . . .

"Accordingly there is no alternative to the vacatur of the attachment. . . ."

New York and Cuba Mail Steamship Company v. Republic of Korea, 132 F. Supp. 684, 685-687 (S.D.N.Y. 1955).

Proof to support motion

The District Court for the Southern District of New York in 1953 on its own accord addressed the following letter to the Department of State regarding a claim of sovereign immunity pleaded by the Hungarian People's Republic in a proceeding before that Court:

"There is now pending in the United States District Court for the Southern District of New York an action brought by the Hungarian People's Republic against Cecil Associates, Inc., Alice Simon, Max Hoffmann and Marcus Katz, to recover the sum of nine thousand dollars deposited by it with defendant as security for plaintiff's faithful performance of the terms of a certain lease.

"By the terms of this lease, dated May 29, 1951, the Hungarian People's Republic rented premises 7 East 84th Street, New York City, for consular purposes only for a term of three years from June 1, 1951. However, the Secretary of State of the United States, by note dated December 28, 1951 to the Minister of the Hungarian People's Republic, required that the Hungarian consulate general be closed by December 31, 1951. Claiming frustration of the contract because of this act of the United States Government, the Hungarian People's Republic commenced the above mentioned suit.

"The individual defendants who took title to the premises after the execution of the plaintiff's lease have asserted a counterclaim against the Hungarian People's Republic in this suit claiming that the plaintiff is liable to them for damages in a sum in excess of nine thousand dollars by reason of plaintiff's alleged breach of the lease by its abandonment of the demised premises before the expiration of the term.

"The Hungarian People's Republic, by motion argued before me on October 27, 1953, move for an order dismissing the counterclaim 'in that they seek affirmative judgment against an immune sovereign, which has not consented to the entry thereof'.

"No proof was adduced on this motion sufficient for me to find that the Hungarian People's Republic is a friendly foreign sovereign and as such entitled to immunity from suit.

"The 'accepted course of procedure' referred to in Ex parte [Republic of] Peru, 318 U.S. 578, 581 [63 S.Ct. 793, 87 L.Ed. 1014], was not followed in the instant case. Judge Clark of this Circuit in Puente v. Spanish National State [2 Cir.], 116 F.2d 43, 45, referred to the practice of judicial inquiry addressed to the executive in case of doubt as to the sovereign character of a defendant claiming immunity. Accordingly, to resolve my doubt as to the Hungarian People's Republic's entitlement to claim the immunity accorded a friendly foreign sovereign, I address this inquiry to you.

"Will you kindly advise this court whether the Department of State recognizes and allows the claim of the Hungarian People's